

July 15, 2014

Mr. Alan Lee
BRAC PMO West
1455 Frazee Road, Suite 900
San Diego, CA 92108-4310

Dear Mr. Lee:

Chicago Bridge & Iron Federal Services, LLC (CB&I), formerly known as Shaw Environmental & Infrastructure, Inc., requested the U.S. Nuclear Regulatory Commission (NRC) determine whether its service provider activities being performed at the U.S. Department of the Navy's (Navy) Hunters Point Naval Shipyard (HPS) were subject to NRC's or State of California's regulatory jurisdiction (ADAMS Accession No. ML120580662). Although CB&I is no longer performing service provider activities at HPS, the results of our review are applicable to other service providers performing similar activities at HPS. The purpose of this letter is to inform you of the NRC's determination and of our coordination efforts with the State to minimize the impact on the Navy.

During the 2012 annual NRC site visit to HPS, the Navy provided a map of HPS (Enclosure 1) that showed the land jurisdiction. Subsequently, the NRC staff performed an evaluation and made a determination of NRC regulatory authority specific to a service provider performing activities with Atomic Energy Act of 1954, as amended (AEA), materials at HPS.

The map provided by the Navy shows a unique land jurisdictional boundary for HPS. Based on the information provided by the Navy and a review by the NRC of the jurisdiction for the radioactive material, contractor relationship, and jurisdiction of land status, the NRC has determined that the NRC and the State of California have split jurisdiction at HPS. Specifically, the Northeast portion of the site as indicated in the enclosed map would generally be treated as exclusive Federal jurisdiction, and the regulatory responsibility for ensuring public health and safety in the use of radioactive materials by service providers would vest in the NRC. Conversely, work performed by a service provider, on the Southwest portion of the site, under proprietary jurisdiction, would generally be subject to State of California's Agreement State jurisdiction. The process used by the NRC staff with respect to this type of jurisdictional determination is detailed in SA-500, "Jurisdictional Determination," (ADAMS Accession No. ML110600350) and FSME-14-049 (ADAMS Accession No. ML14086A475), an All Agreement States letter that provides additional clarification to SA-500.

Jurisdictional Determination

As part of NRC's process for jurisdictional determinations, an evaluation needs to be made as to whether service providers are considered Federal employees or independent contractors. Generally, only the NRC can regulate Federal entities. Based on the NRC's understanding of CB&I's contractual relationship with the Navy at HPS, CB&I was not a Federal employee, but rather an independent contractor that would be subject to Agreement State authority when operating in areas that were not exclusive Federal jurisdiction. Given the varied legislative

jurisdictional nature of HPS, as indicated by the Navy, the NRC staff has concluded that to the extent it conducted decommissioning activities involving radioactive material on both the Northeast and Southwest portions of the site, CB&I would have been required to have both an NRC license and a California Agreement State license.

Based upon the information provided by the Navy, a portion of the site (generally Northeast of the line as indicated in a site map contained in Enclosure 1) is designated as partial jurisdiction. Partial legislative jurisdiction applies in those “instances where the Federal Government has been granted certain aspects of the state’s authority for exercise by the United States over an area in a state, but where the state has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil or criminal process in the area ...”¹ Navy’s guidance states for an area of partial jurisdiction, “[a]dministration of the Federal area is the same as if it were under exclusive federal jurisdiction for those state powers granted to the Federal Government without reservation.”² At the HPS, it appears that the health and safety legislative and regulatory responsibilities have been granted to the Federal government. The NRC staff reaches this conclusion based on the fact that the Navy provides fire and police services to this area through contracts the Navy has with the adjoining local jurisdictions. Therefore, the staff concludes that this portion of the site would be treated as exclusive federal jurisdiction for administration of the AEA; and the regulatory responsibility for ensuring that radioactive materials are used in a manner that is protective of the public’s health and safety would vest in the NRC. Accordingly, work performed by CB&I, and other service providers, on this portion of the site would be subject to a service provider license issued by NRC.

The rest of the site (generally southwest of the line as indicated in a site map contained in Enclosure 1) has been designated as proprietary jurisdiction. With respect to this area, the Navy’s guidance states that under proprietary jurisdiction the State retains civil and criminal legislative jurisdiction over the Federal area.³ Accordingly, where the Navy has proprietary jurisdiction, an Agreement State would have regulatory jurisdiction over the use of radiological material in that jurisdictional area by private entities as provided for in its agreement with the NRC. At HPS, work performed by CB&I or other service providers not considered to be Federal employees on the proprietary portion of the site would be subject to the State of California’s regulatory authority under the NRC’s Agreement State program.

In recent discussions with personnel from the Navy’s Radiological Affairs Support Office and Base Realignment and Closure Office on this topic, they provided an additional map which delineates the partial and proprietary jurisdiction portions of the HPS. This map is provided as Enclosure 2. It is requested that the Navy, being the landowner, address any specific questions from its service providers on whether or not an area is partial or proprietary jurisdiction if they arise.

¹ Naval Facilities Engineering Command (NAVFAC) Real Estate Procedural Manual, Chapter 26, pg. 26-2 – 26-3.

² *Id.* at 26-4.

³ *Id.* at 26-4.

State Coordination

The NRC and the State of California have agreed to collaborate on site inspections. Given the complexities of this jurisdictional determination, these planned collaborative efforts are being undertaken in order to ease the transition of oversight for the service providers at the HPS. The NRC staff notes that the State of California's Agreement State Program does not have regulatory authority over the Navy itself because it is a Federal entity. The State of California's role, as an Agreement State, is limited to the oversight of the activities of private service providers generally on the Southwest portion of the site.

Please note that this letter only pertains to the jurisdiction for the service providers conducting radiological activities for the Navy at HPS. This is separate from the ongoing jurisdictional discussions the NRC is engaged in with the Department of Defense regarding the Military Departments' possession and ongoing remediation of radium at military sites in general.

Should you have any additional questions, or need further assistance in this matter, please contact Mr. Richard Chang on (301) 415-5563 or by email at richard.chang@nrc.gov.

Sincerely,

/RA/

Andrew Persinko, Deputy Director
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:

1. Site Map
2. Site Map with Jurisdictional Boundaries

cc: Attached List

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